

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICHARD R. SCOTT,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS, *et al.*,

Defendant.

Case No. C06-5614FDB

REPORT AND
RECOMMENDATION TO
DISMISS COMPLAINT
WITHOUT PREJUDICE

Noted for November 24, 2006

This case has been referred to Magistrate Judge J. Kelley Arnold pursuant to 28 U.S.C. § 636(b)(1)(B). This matter comes before the court upon plaintiff's request to withdraw his complaint (Doc. 6). After reviewing plaintiff's motion, the undersigned recommends that the court GRANT the motion and dismiss this matter without prejudice pursuant to Rule 41(a).

Under Rule 41, a plaintiff has the right to voluntarily dismiss his case when no answer or motion for summary judgment has been filed by an adverse party. Rule 41(a)(1) specifically provides that dismissal as a matter of right can be foreclosed only by the filing of an answer or a motion for summary judgment. Roddy v. Dendy, 141 F.R.D. 261, 262 (S.D. Mississippi, 1992).

Mr. Scott is requesting dismissal because he states he is choosing to pursuing the issues and claims in another case, *Scott v. Nerio*. At this time, the court has not reviewed Plaintiff's application to proceed in forma pauperis nor has it considered the issue of service of the underlying complaint. Other than Mr. Scott, no other party has appeared in the above captioned case. Accordingly, plaintiff's request to withdraw the complaint should be GRANTED, and this matter should be dismissed without prejudice.

1 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the
2 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.R.Civ.P.
3 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v.
4 Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to
5 set the matter for consideration on **November 24, 2006**, as noted in the caption.

6 DATED this Thursday, November 2, 2006.

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8 /s/ J. Kelley Arnold
9 J. Kelley Arnold
United States Magistrate Judge
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